

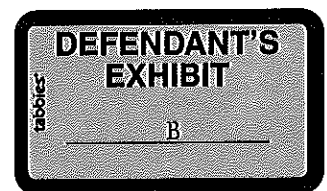
**ALVERENE BUTLER**

**v.**

**ALABAMA DEPARTMENT OF TRANSPORTATION, et  
al.**

**MARK WAITS**

**January 4, 2007**



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<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT CIRCUIT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION</p> <p>ALVERENE BUTLER, Plaintiff,</p> <p>vs. CASE NO. 2:06-CV-278-MEF</p> <p>ALABAMA DEPARTMENT OF TRANSPORTATION, et al., Defendants.</p> <p style="text-align: center;">* * * * *</p> <p style="text-align: center;">DEPOSITION OF MARK WAITS,</p> <p>taken pursuant to notice and stipulation on behalf of the Plaintiff, and the ALABAMA DEPARTMENT OF TRANSPORTATION, 1409 Coliseum Boulevard, Room K-101, Montgomery, Alabama 36130-3050, before DAWN A. GOODMAN, Certified Shorthand Reporter and Notary Public in and for the State of Alabama at Large, on Thursday, January 4, 2007, commencing at 12:45 o'clock p.m.</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">STIPULATIONS</p> <p>1 It is hereby stipulated and agreed by 2 and between counsel representing the parties 3 that the Deposition of Mark Waits is taken 4 pursuant to notice and stipulation on behalf of 5 the Plaintiff; that all formalities with 6 respect to procedural requirements are waived; 7 that said deposition may be taken before 8 DAWN A. GOODMAN, Certified Shorthand Reporter 9 and Notary Public in and for the State of 10 Alabama at Large, without the formality of a 11 commission; that objections to questions, other 12 than objections as to the form of the 13 questions, need not be made at this time, but 14 may be reserved for a ruling at such time as 15 the deposition may be offered in evidence or 16 used for any other purpose as provided for by 17 the Civil Rules of Procedure for the State of 18 Alabama. 19 20 It is further stipulated and agreed by 21 and between counsel representing the parties in 22 this case that the filing of the Deposition of 23 Mark Waits is hereby waived and that said</p>
<p style="text-align: center;">2</p> <p style="text-align: center;">APPEARANCES</p> <p>1 2 3 FOR THE PLAINTIFF: 4 JAY LEWIS, Esquire 5 847 South McDonough Street 6 Suite 100 7 P.O. Box 5059 8 Montgomery, Alabama 36104 9 10 FOR THE DEFENDANTS: 11 HARRY LYLES, Esquire 12 Alabama Department of Transportation 13 1409 Coliseum Boulevard 14 Room K-101 15 Montgomery, Alabama 36130-3050 16 17 H. MITCHELL ALTON, III, Esquire 18 Alabama Department of Transportation 19 1409 Coliseum Boulevard 20 Room K-101 21 Montgomery, Alabama 36130-3050 22 ALSO PRESENT: 23 B Todd Jackson</p>	<p style="text-align: center;">4</p> <p>1 deposition may be introduced at the trial of 2 this case or used in any other manner by either 3 party hereto provided for by the Statute, 4 regardless of the waiving of the filing of 5 same. 6 It is further stipulated and agreed by 7 and between the parties hereto and the witness 8 that the signature of the witness to this 9 deposition is hereby waived. 10 11 * * * * * 12 13 14 15 16 17 18 19 20 21 22 23</p>

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<p>1 INDEX</p> <p>2 Page</p> <p>3 Examination by Mr. Lewis 6</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>5</p> <p>7</p> <p>1 A. It's a classification within the</p> <p>2 Department. My working title is District</p> <p>3 Engineer.</p> <p>4 Q. Okay. And just so I remember, there is a</p> <p>5 Division Engineer. Then, under it,</p> <p>6 District Engineer. And then, under that,</p> <p>7 Project Engineer,; but they are all</p> <p>8 called something else now?</p> <p>9 A. Well, there is Division Engineer and then</p> <p>10 the Maintenance Engineer and then</p> <p>11 District Engineer.</p> <p>12 Q. Okay.</p> <p>13 A. Then your Project Engineer.</p> <p>14 Q. So you would report to a Maintenance</p> <p>15 Engineer?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Have you had the position that you now</p> <p>18 occupy for at least five years?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So at all times material to the Complaint</p> <p>21 in this case, you were the supervisor of</p> <p>22 Mr. Jackson?</p> <p>23 A. Yes, sir.</p>
<p>6</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT REPORTER: Did counsel</p> <p>3 want the usual stipulations?</p> <p>4 MR. LYLES: Yes, please.</p> <p>5 MR. LEWIS: Yes.</p> <p>6</p> <p>7 (MARK WAITS, of lawful age,</p> <p>8 having been duly sworn,</p> <p>9 testified as follows:)</p> <p>10</p> <p>11 EXAMINATION</p> <p>12</p> <p>13 BY MR. LEWIS:</p> <p>14 Q. (By Mr. Lewis) State your name, please.</p> <p>15 A. Mark Terence Waits.</p> <p>16 Q. Mr. Waits, you have been sitting in here</p> <p>17 when we talked to everybody else. I'm</p> <p>18 not going to go over the ground rules for</p> <p>19 a deposition with you.</p> <p>20 What is your position with</p> <p>21 ALDOT?</p> <p>22 A. I am a Transportation Manager.</p> <p>23 Q. And what is a Transportation Manager?</p>	<p>8</p> <p>1 Q. And ultimately within your chain of</p> <p>2 command was Alverene Butler?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And Karen Stacey?</p> <p>5 A. Yes, sir.</p> <p>6 Q. There was an accident that we have been</p> <p>7 talking about during Mr. Jackson's</p> <p>8 deposition and during Ms. Stacey's</p> <p>9 deposition that I will represent to you</p> <p>10 took place on or about January 31st of</p> <p>11 2005. Are you aware of that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. How did you become aware of that</p> <p>14 accident?</p> <p>15 A. I don't recall the exact day it was</p> <p>16 brought to my attention and, to tell the</p> <p>17 truth, I don't know exactly how I found</p> <p>18 out about it. I just did. I don't know</p> <p>19 if Todd informed me or some of my</p> <p>20 personnel in the District Office that</p> <p>21 handles those type issues brought it to</p> <p>22 my attention. I just don't recall.</p> <p>23 Q. When did you first become aware that</p>

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<p>9</p> <p>1 there had been a confrontation between</p> <p>2 Ms. Butler and Ms. Stacey over alleged</p> <p>3 comments that Ms. Stacey made?</p> <p>4 A. The confrontation I assume you are</p> <p>5 speaking of is the confrontation that</p> <p>6 occurred on the job site the day that</p> <p>7 Todd got called back.</p> <p>8 Q. Yes, April 8th, 2005.</p> <p>9 A. I believe the confrontation occurred on a</p> <p>10 Monday, and it was possibly the next day,</p> <p>11 the next working day.</p> <p>12 Q. How did you become aware of it?</p> <p>13 A. I believe Todd Jackson had called me and</p> <p>14 informed me what was going on.</p> <p>15 Q. Okay. And what did Mr. Jackson tell you</p> <p>16 about it?</p> <p>17 A. He needed to speak to me about some</p> <p>18 issues that occurred actually the week</p> <p>19 before, and that happened that Monday.</p> <p>20 Q. What other issues had occurred the week</p> <p>21 before?</p> <p>22 A. When we finally met, he brought to my</p> <p>23 attention that there was some discussions</p>	<p>11</p> <p>1 Personnel?</p> <p>2 A. I talked to Mr. Ed Phillips and Mr. Doug</p> <p>3 Furlow.</p> <p>4 Q. What, if anything, did they tell you?</p> <p>5 A. We sat down and discussed the situation</p> <p>6 as far as the complaint for the sexual</p> <p>7 harassment, I mean how the racial</p> <p>8 harassment allegations went, and the</p> <p>9 incident combined with the incident that</p> <p>10 occurred Monday, okay, as to what to do.</p> <p>11 And we determined that if</p> <p>12 there was a racial slur, okay, then Rene</p> <p>13 had the opportunity, if she wanted to, to</p> <p>14 file a complaint. None had been filed</p> <p>15 yet. We didn't discourage her from doing</p> <p>16 that.</p> <p>17 But Mr. Furlow advised that</p> <p>18 I look into the matter to see if there</p> <p>19 might have been an alleged racial slur by</p> <p>20 Karen by asking some of the other</p> <p>21 employees, which is a normal procedure if</p> <p>22 there is harassment or violation of that</p> <p>23 policy.</p>
<p>10</p> <p>1 between himself and Karen Stacey and</p> <p>2 Alverene Butler about some racial slurs</p> <p>3 that had been mentioned and plus the</p> <p>4 occurrence that occurred on that Monday</p> <p>5 where work got interrupted.</p> <p>6 Q. And what, if anything, did you do about</p> <p>7 that report to you?</p> <p>8 A. First, I gathered the information from</p> <p>9 Todd as to exactly what happened. Now,</p> <p>10 I'm talking about the accident, okay -- I</p> <p>11 mean, the occurrence on Monday, okay, to</p> <p>12 see what interrupted the work; and then</p> <p>13 we discussed the issue that had occurred</p> <p>14 Wednesday or Thursday when he got a</p> <p>15 report about a racial slur. So I</p> <p>16 gathered up the information.</p> <p>17 He was seeking advice on</p> <p>18 what to do. It was a unique situation as</p> <p>19 far as our racial harassment policies go,</p> <p>20 so I sought information from the Division</p> <p>21 Personnel as far as what steps we</p> <p>22 probably needed to take from there.</p> <p>23 Q. Who did you go talk in the Division</p>	<p>12</p> <p>1 Q. I'm a little unclear. You keep talking</p> <p>2 about the incident on Monday, and I'm</p> <p>3 assuming that's the April 8th incident in</p> <p>4 which the confrontation took place.</p> <p>5 A. Yes, I assume it was on April 8th. I'm</p> <p>6 not sure. I know it was on a Monday</p> <p>7 morning.</p> <p>8 Q. All right. I want to make sure I'm</p> <p>9 right. All right. I have on my calendar</p> <p>10 that April 8th was a Friday for 2005.</p> <p>11 A. Okay.</p> <p>12 Q. And you're saying that the incident that</p> <p>13 you're talking about took place on a</p> <p>14 Monday?</p> <p>15 A. Right.</p> <p>16 Q. All right. And that would be April 11th,</p> <p>17 quite possibly. Would you have any</p> <p>18 documents in your possession that would</p> <p>19 reflect the date that you became aware of</p> <p>20 the incident or when the incident took</p> <p>21 place itself?</p> <p>22 A. As far as documents, no. I can't think</p> <p>23 of any that I would have.</p>

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<p>13</p> <p>1 Q. All right. So you decided to talk to 2 some of the employees who were there? 3 A. No, that was advised for me to talk to 4 some of the employees. 5 Q. Did you talk to any of the employees? 6 A. Yes. 7 Q. Who did you talk to? 8 A. The employees that were on that project 9 that were involved in the 10 cross-sectioning that day on the 11th, 11 and that's who I talked to, which I think 12 you have already got most of their names 13 from the previous testimonies. 14 Q. Did you talk to Mr. Johnson, or would you 15 even remember at this point? 16 A. I believe I did, yes, sir. 17 Q. How about Mr. Wynn? 18 A. I believe I did. 19 Q. Okay. And what did Mr. Johnson tell 20 you? 21 A. Mr. Lewis, I don't recall the exact 22 testimony. 23 Q. All right. Do you recall what you</p>	<p>15</p> <p>1 interstate most of the day and didn't get 2 the opportunity to handle that. Well, 3 upon my discovery and investigation that 4 Monday morning, before those crews ever 5 left the office, Rene had approached some 6 of the other employees there and brought 7 the issue up and was quizzing them about 8 the racial slur and statements she had 9 made to them earlier. 10 The general consensus was, 11 from the employees that I talked to, was 12 that she did do this. And she brought it 13 to them; they didn't bring it to her. 14 And they pretty much told her at the time 15 they don't want to talk about this 16 anymore. Leave it alone. They did not 17 want to discuss this. 18 Well, when they got out to 19 the job site -- everyone -- to start 20 cross-sectioning as directed by Todd, one 21 of the ones that she approached that 22 morning, one of the employees, other 23 employees, who pretty much said he had</p>
<p>14</p> <p>1 learned from that, how you finally put 2 together what had happened? 3 A. Yes, sir. Based on the information that 4 I received and trying to determine what 5 happened that delayed the work, okay, I'm 6 talking about the incident. Mr. Jackson 7 was very upset when he came to me and 8 because of the stoppage of work. That 9 was his biggest issue: My work got 10 stopped because something happened. 11 What I gathered from my 12 initial investigation was that the 13 previous week, the week of the 8th, he 14 was dealing with Karen and Rene's issue 15 about the racial slur, and he had been 16 informed or had instructed Rene that 17 Friday, the 8th, that he didn't know how 18 to handle it just yet. Just keep it to 19 yourself. Don't talk to nobody. Let me 20 get with Mr. Waits on Monday, and I will 21 get back with you. 22 Well, on Monday morning, I 23 was tied up in an emergency on the</p>	<p>16</p> <p>1 had enough of it to her that morning 2 brought it to Karen's attention, "Rene's 3 got something she wants to say to you." 4 And that's what stopped the work. That's 5 when the discussion between the two went 6 on and the work got stopped. 7 And it was in my 8 interpretation and investigation and 9 opinion that if Rene, at the time, had 10 not brought the issue up as instructed on 11 that Friday, that Monday morning that 12 incident would have never happened as it 13 did, because the employees would not have 14 even thought about this issue. They 15 would have gone to work as Todd told them 16 to go to work. So based on that, I 17 concurred with Todd's recommendation to 18 do a reprimand for Rene disrupting work. 19 That's where the reprimand came from. 20 As far as the racial 21 harassment slur or the racial slur, there 22 again, Mr. Furlow was involved in that at 23 that time, too, with recommendations to</p>

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<p>17</p> <p>1 find out if there was anything said at 2 the time. Right after that, I believe 3 that very week, I think Rene actually 4 filed a complaint, so we dealt with it in 5 the formal manner instead of the informal 6 manner. 7 Q. I'm still a little confused about time 8 lines. Let me see if I can nail it down. 9 Your understanding is that 10 the week before this Monday incident, the 11 confrontation -- we'll call it the 12 confrontation, all right, that stopped 13 the work, okay? The week before that, 14 Mr. Jackson knew about the racial slurs 15 because Ms. Butler had told him about 16 it. 17 A. Ms. Stacey had told him about it. 18 Q. Stacey had told him about it? 19 A. (Witness nods head.) 20 Q. Okay. All right. And Stacey had told 21 him, as you understand it, that she had 22 understood that Ms. Butler was going 23 around claiming she, Ms. Stacey, had made</p>	<p>19</p> <p>1 Ms. Butler. 2 A. Okay. Let me see if I can clarify. I 3 don't understand your question. Are you 4 saying prior to that would I have called 5 employees in, co-workers, to question 6 them about Ms. Rene and Ms. Stacey? 7 Q. No. About -- specifically about 8 Ms. Butler. 9 A. I can say I have talked to other 10 employees or co-workers about 11 Ms. Butler. 12 Q. And what have you talked to them about? 13 A. It was dealing with another supervisor 14 she had previously a couple years 15 before. 16 Q. Was that a supervisor against whom she 17 had made a complaint? 18 A. Yes. 19 Q. What was his name? 20 A. Jim Horace. 21 Q. And what was the nature of that 22 complaint? 23 A. She had filed a sexual harassment case or</p>
<p>18</p> <p>1 racist statements? 2 A. Correct. 3 Q. Okay. All right. And then, if the 4 confrontation took place, it would have 5 been on that -- probably on that Monday, 6 the 11th, which would have followed the 7 week in which Mr. Jackson learned of 8 this? 9 A. Um-hum, that's correct. 10 Q. All right. Prior to that confrontation, 11 had you spoken with any of Ms. Butler's 12 co-workers about whether she was creating 13 a hostile environment or whether she was 14 causing trouble? 15 A. No. 16 Q. You didn't call several of them into your 17 office one at a time to ask them these 18 things prior to the confrontation? 19 A. Could you be more specific on the dates? 20 Q. Well, no, I can't. I wish I could. I 21 just can't. But it would have been 22 sometime prior to the time of this 23 interaction between Ms. Stacey and</p>	<p>20</p> <p>1 a complaint against Jim Horace. 2 Q. Okay. And was it as a consequence of her 3 having filed that complaint against 4 Mr. Horace that she was transferred from 5 his supervision to Mr. Jackson's 6 supervision? 7 A. No. 8 Q. Why was she transferred from Mr. Horace's 9 supervision? 10 A. After the complaint on Mr. Horace was 11 filed for sexual harassment, our EEO 12 officers did a thorough investigation, 13 and they recommended at that very day 14 that the complaint was filed to have 15 Ms. Butler and others removed from his 16 direct supervision. When I say, "they," 17 the Division Engineer at that time. 18 Q. And, in fact, he was left without anybody 19 to supervise? 20 A. I don't recollect, Jay, if he had anybody 21 or not. It could be. 22 Q. At that time prior to this confrontation, 23 and even prior to the automobile accident</p>

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<p>21</p> <p>1 that sparked all of the controversy, did</p> <p>2 you have any conversations with anybody</p> <p>3 about whether or not Ms. Butler would be</p> <p>4 a potential troublemaker in her</p> <p>5 assignment?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you ask anybody whether they</p> <p>8 thought she had a chip on her shoulder?</p> <p>9 A. Specify -- those exact terms? No.</p> <p>10 Q. Or any terms implying the same thing,</p> <p>11 that Ms. Butler was going to be touchy,</p> <p>12 that she was going to be easily offended,</p> <p>13 that she was going to be hard to get</p> <p>14 along with? Anything like that?</p> <p>15 A. No.</p> <p>16 Q. Okay. All right. Now tell me what --</p> <p>17 you had indicated earlier you had talked</p> <p>18 to co-workers, slash, employees about her</p> <p>19 transfer or about her previous</p> <p>20 supervisor. Can you explain?</p> <p>21 A. I didn't say that earlier. You may be</p> <p>22 mis --</p> <p>23 Q. I may have misheard you. Before the</p>	<p>23</p> <p>1 Q. You've heard me ask Mr. Jackson about</p> <p>2 some policies. Let me show you something</p> <p>3 I will identify as a memorandum</p> <p>4 purportedly from you. It is not dated,</p> <p>5 and I will read you -- yes, it is dated,</p> <p>6 August 24th, 2005, to all District Three</p> <p>7 supervisors. It has to do with, I</p> <p>8 believe, leave policies, approved and</p> <p>9 disapproved leave. You take a minute and</p> <p>10 glance over that.</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Now, was I correct it said August</p> <p>13 24th, 2005?</p> <p>14 A. That's what the date on the memorandum</p> <p>15 is.</p> <p>16 Q. All right. In it, you're asking your</p> <p>17 supervisors to go back to specifically</p> <p>18 April 8th, 2005, and conduct, what, a</p> <p>19 survey or an audit of the leave that's</p> <p>20 been approved?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. What was the purpose of that</p> <p>23 memo?</p>
<p>22</p> <p>1 confrontation in April, had you had any</p> <p>2 discussions with anybody, any of Ms.</p> <p>3 Butler's co-workers, about Ms. Butler?</p> <p>4 A. And I told you earlier I did.</p> <p>5 Q. Okay. And what was that about?</p> <p>6 A. It was about the Jim Horace complaint.</p> <p>7 Q. Right.</p> <p>8 A. During that time of the complaint.</p> <p>9 Q. But not after she had been transferred?</p> <p>10 A. Not after she had been transferred.</p> <p>11 Q. I got it. Now I understand. Now,</p> <p>12 following the confrontation, you said you</p> <p>13 talked to several of the people who had</p> <p>14 been out there at the time.</p> <p>15 A. Um-hum. Yes, sir.</p> <p>16 Q. Did any of them -- did you ask any of</p> <p>17 them whether or not Ms. Butler was</p> <p>18 creating a hostile environment?</p> <p>19 A. Yes.</p> <p>20 Q. And what did they tell you?</p> <p>21 A. Some said yes and some said no.</p> <p>22 Q. Can you recall who said yes?</p> <p>23 A. No, sir; I can't recall offhand.</p>	<p>24</p> <p>1 A. The Department had our -- what is Lamar</p> <p>2 McDavid's title? Our Finance Director</p> <p>3 put a memorandum out about disapproved</p> <p>4 leave. And if it's disapproved leave,</p> <p>5 then that employee is not entitled to</p> <p>6 that leave. They may be on leave without</p> <p>7 pay.</p> <p>8 Q. Okay.</p> <p>9 A. My direct supervisor informed me that we</p> <p>10 could not put an individual on leave</p> <p>11 without pay, contrary to the memorandum</p> <p>12 the Finance Director or Bureau Chief put</p> <p>13 out. He instructed me to allow them</p> <p>14 leave, even though it was disapproved.</p> <p>15 Well, when the auditors came</p> <p>16 in and audited our payrolls, okay, around</p> <p>17 that date, they found leave slips that</p> <p>18 had disapproved leave on them, but</p> <p>19 they were allowed the leave. In other</p> <p>20 words, their time sheets, their payroll</p> <p>21 sheets showed that they were allowed that</p> <p>22 leave, and they said that this is</p> <p>23 incorrect; you have to have a</p>

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<p>25</p> <p>1 supplemental payroll sheet made out to 2 correct that. 3 So any previous payrolls 4 that allowed them to use this leave, 5 whether it's sick, annual, or comp time 6 or whatever the case may have been, and 7 it was disapproved, that a supplemental 8 payroll would have to be made out; and 9 that's what this was pertaining to. 10 Q. Okay. 11 A. We finally got the official word and my 12 supervisors above me that any disapproved 13 leave now would be AWOP. So we had to 14 correct all of our leave or payrolls by 15 supplemental payroll. 16 Q. So you had to go back from August back 17 through April in order to do that? 18 A. They audited us, I think it was, around 19 the 1st of May to that period, and found 20 some, so we had to go back to the first 21 of the year. 22 Q. Did this memorandum go out to all 23 District Three supervisors?</p>	<p>27</p> <p>1 A. Right. Okay. I'll try. I thought I 2 explained it. Maybe I did a poor job of 3 that earlier. It's the Department's 4 policies and procedures that if you 5 disapprove a leave slip that that 6 individual is not entitled to their 7 leave, okay? And if they take off, 8 they're leave without pay. 9 Q. Right. 10 A. My direct supervisors pulled out the same 11 policy and procedures, and it said the 12 only person that had the authority to put 13 an individual on leave without pay is the 14 appointing authority: That would be the 15 Director of Transportation, and he held 16 steady to that. In other words, if Todd 17 was to come to me and ask me for leave 18 and I said no, and he took it anyway, I 19 could not put him on leave without pay. 20 I just wrote "disapproved," and it would 21 be dealt with through his performance 22 appraisal. 23 Q. I see.</p>
<p>26</p> <p>1 A. Yes. 2 Q. Let me read, I'm just going to read this 3 last paragraph because I don't have a 4 copy for the record. 5 "This office is reviewing 6 all previous leave slips from April 8th, 7 2005, in order to identify disapproved 8 leave for possible payroll corrections. 9 I strongly suggest that you discuss this 10 matter with all of your employees and 11 acknowledge their complete understanding. 12 Should you need any other assistance on 13 this matter, please feel free to contact 14 me." 15 Help me understand this. I 16 heard what you said about disallowed 17 leave. It would be charged as leave 18 without pay. 19 A. Um-hum. 20 Q. I don't understand the process by which 21 leave would be disapproved or disallowed 22 and it would still be allowed on the 23 payroll.</p>	<p>28</p> <p>1 A. Violation. Well, after finding 2 clarification to that issue, and 3 especially when the auditors found leave 4 slips that were disapproved and the leave 5 was allowed, we clarified that and went 6 back to the policy that the Finance 7 Bureau Chief put out that any disapproved 8 leave would be leave without pay. Well, 9 we had to correct the ones that were 10 incorrect. 11 Q. All right. 12 A. As a whole set. All the way across the 13 District. 14 Q. So if leave had been disapproved, not 15 only was the leave charged against the 16 leave balance of the employee, but the 17 employee was paid for the time leave was 18 taken? 19 A. Say that one more time. 20 MR. LYLES: That's what his view 21 is. 22 Q. (By Mr. Lewis) Yeah, I'm trying to 23 summarize. Up until this memorandum</p>

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<p>29</p> <p>1 came, if an employee asked for leave and</p> <p>2 you turned it down or the supervisor</p> <p>3 turned it down, it was -- the only thing</p> <p>4 that happened was a notation was made</p> <p>5 "disapproved," and it would be taken up</p> <p>6 as a performance issue?</p> <p>7 A. Right.</p> <p>8 Q. But the employee could still take that</p> <p>9 leave and would be paid for it, and it</p> <p>10 would be charged against his leave</p> <p>11 balance?</p> <p>12 A. Right.</p> <p>13 Q. Okay.</p> <p>14 MR. LYLES: A great system.</p> <p>15 MR. JACKSON: We all thought it</p> <p>16 was okay, too.</p> <p>17 A. Jay, this memorandum right here that was</p> <p>18 put out in that last paragraph you just</p> <p>19 read was to get all of the supervisors to</p> <p>20 discuss it with their employees, because</p> <p>21 I didn't want the precedent set or to</p> <p>22 promote employees into thinking that they</p> <p>23 could take leave. I wanted them to</p>	<p>31</p> <p>1 disapproved leave he took in May?</p> <p>2 A. Mr. Lewis, I don't know how the payrolls</p> <p>3 and accounts reimbursements are set. I</p> <p>4 think he has to write them a check, but</p> <p>5 I'm not sure. I don't know.</p> <p>6 Q. In other words, he would have to pay them</p> <p>7 back for any disallowed leave?</p> <p>8 A. I don't know how they work that. I don't</p> <p>9 know if they deduct his leave and have to</p> <p>10 write them a check. I just don't know.</p> <p>11 Q. Okay. Would there be documents</p> <p>12 reflecting when the auditors would have</p> <p>13 given instructions to go back to April</p> <p>14 8th?</p> <p>15 A. I'm sure they probably have a record of</p> <p>16 when they audit payrolls. I don't know.</p> <p>17 I really don't know.</p> <p>18 Q. I'm just concerned about why that</p> <p>19 particular date.</p> <p>20 A. Right.</p> <p>21 Q. Unless that's simply the first date that</p> <p>22 was covered by the audit.</p> <p>23 A. I don't know. I can't tell you.</p>
<p>30</p> <p>1 understand that if they took it that they</p> <p>2 weren't going to get paid if it was</p> <p>3 disapproved, okay?</p> <p>4 Q. (By Mr. Lewis) Okay. When you went back</p> <p>5 and did the supervisor supplemental</p> <p>6 payroll that you were talking about, did</p> <p>7 that affect some employees' future pay?</p> <p>8 In other words, let me ask it this way.</p> <p>9 Let me ask an example. If, for example,</p> <p>10 Joe Jones had asked for leave in May of</p> <p>11 2005, eight hours' leave --</p> <p>12 A. All right.</p> <p>13 Q. -- and you said no and you wrote</p> <p>14 "disapproved."</p> <p>15 A. This would be like in April when he</p> <p>16 asked?</p> <p>17 Q. No, let's say -- yeah, he asks in April.</p> <p>18 He takes it in May.</p> <p>19 A. All right.</p> <p>20 Q. Now, we're into August or September.</p> <p>21 A. Um-hum.</p> <p>22 Q. And this memo is coming out. Would he be</p> <p>23 docked in a future paycheck for this</p>	<p>32</p> <p>1 Q. Let me ask you about a meeting that</p> <p>2 Ms. Butler has told me took place between</p> <p>3 you and her on April 22nd, 2005. And I</p> <p>4 know you are not going to remember exact</p> <p>5 dates. But did you have a meeting late</p> <p>6 in April with Ms. Butler?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay. Did you have a meeting with her in</p> <p>9 which you asked her about her grievances</p> <p>10 and what her grievances were?</p> <p>11 A. I don't recall. I just don't recall.</p> <p>12 Q. And I'll ask a couple more. Maybe it</p> <p>13 will jog your memory, maybe not.</p> <p>14 Did you ever ask her in a</p> <p>15 meeting whether she was familiar with the</p> <p>16 procedure for filing complaints about</p> <p>17 racial slurs?</p> <p>18 A. I don't recall.</p> <p>19 Q. Okay. What is an estimate?</p> <p>20 A. The contractor performs work for us.</p> <p>21 Q. Uh-huh.</p> <p>22 A. And we have pay items set up on each</p> <p>23 contract that has a unique value to each</p>

8 (Pages 29 to 32)

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<p>33</p> <p>1 unit as work. And as he does the work 2 during the month, we measure or count 3 those items of work, compile all of the 4 quantities up, put a dollar value on it 5 and call it an estimate for a monthly 6 voucher. 7 Q. All right. Did you have a conversation 8 with Ms. Butler in which you talked to 9 her about estimates, if you recall? 10 A. I couldn't recall. 11 Q. Okay. Did you have a discussion with 12 Ms. Butler at any time about her 13 appraisal, annual appraisal, that was to 14 have been given to her sometime in April 15 of 2005? 16 A. Are you talking about the appraisal she 17 got in April of 2005? 18 Q. Yes. Performance appraisal. 19 A. Mr. Lewis, I could have. I just don't 20 recall. I know I remember talking to her 21 about appraisals in the past, but it 22 could have been dealing back with one 23 previous. I just don't recall that exact</p>	<p>35</p> <p>1 records out. November of '04 to April of 2 '05, somewhere in there she took it twice 3 and failed it twice. 4 Q. Were some employees allowed to take the 5 test in the coordinator's office? 6 A. Not that I am aware of. I physically 7 don't know that. 8 Q. Okay. Was there ever a conversation at 9 which you were present with Stacey about 10 finding some way to get rid of 11 Ms. Butler? 12 A. No. 13 Q. Were you ever aware of any situation by 14 which hours were deducted from the pay 15 of Mr. Johnson, Ms. Butler, Mr. Wynn and 16 Ms. Knight as a result of statements made 17 by Stacey? 18 A. No, sir. 19 Q. Have you told me everything you can 20 remember about the meetings that you had 21 with Ms. Butler's co-workers during your 22 investigation of the confrontation? 23 A. Have I told you everything?</p>
<p>34</p> <p>1 one. 2 Q. Do you recall asking her about these 3 racial slurs that Karen Stacey was 4 supposed to have made? 5 A. No, sir. I don't recall asking her. 6 Q. Do you know anything about Ms. Butler's 7 ACI certification? 8 A. Yes, sir. 9 Q. Okay. Tell me what you know about that 10 process that she went through. 11 A. I know Ms. Butler had taken the ACI 12 previously and had passed. And every so 13 many years you have to go back and take 14 it again, okay, to get recertified. And 15 I don't remember the exact dates, but I 16 know Ms. Butler had failed a portion of 17 it, which there is actually three 18 portions, Mr. Lewis; and if you fail one 19 part, you fail it all, okay? 20 And we re-entered her into 21 another class to take the ACI again, and 22 she failed it again. That was in the 23 year of -- I would have to pull the</p>	<p>36</p> <p>1 Q. That you can remember about those 2 meetings? 3 A. I have answered your questions pertaining 4 to them, yes, sir. 5 Q. Let me ask you this, then, and that's a 6 good answer. I appreciate that. It 7 makes me work. 8 Do you recall a specific 9 meeting with Mr. Johnson? 10 A. Yes, sir. I remember talking to the 11 employees, but I don't remember the 12 specific meetings. I wrote down the 13 information pertaining to Ms. Butler's 14 complaint in the initial investigation. 15 And other than that, I would have to go 16 read them just to refresh my memory on 17 what was discussed. 18 Q. Did you maintain those notes? 19 A. I think there are some departmental 20 records as far as -- I don't know how 21 that's kept through EEOC documents. 22 MR. LYLES: If we have got it, 23 we'll turn it over to you.</p>

9 (Pages 33 to 36)

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<p>37</p> <p>1 MR. LEWIS: Yeah, I need to do a 2 request anyway. 3 MR. LYLES: Just for the record, 4 the records that Mr. Waits is 5 talking about, I'm going to 6 check on that. If we have 7 such a record, I will turn it 8 over to counsel. 9 Q. (By Mr. Lewis) Okay. Going back to 10 that -- I got distracted when you started 11 talking about the stuff that you had 12 written down -- do you recall anything 13 specifically about the meeting you had 14 with Mr. Johnson? 15 A. No, sir. Not just right offhand. 16 Q. So you wouldn't know whether he had ever 17 told you that he felt that Ms. Butler was 18 being treated unfairly? 19 A. No, sir. 20 Q. Okay. How about any meeting with 21 Mr. Feagin? Do you remember anything 22 about the substance of the conversation 23 with Mr. Feagin?</p>	<p>39</p> <p>1 heard before. 2 Q. Did you have -- do you recall any 3 specific conversation about whether or 4 not Ms. Stacey did make or did not make 5 the statements attributed to her by 6 Ms. Butler during the accident? 7 A. I'm sorry. Say that again. 8 Q. That was really convoluted. Do you have 9 any specific recollection of whether you 10 discussed with Ms. Stacey whether or not 11 she made the statements that Ms. Butler 12 attributed to her? 13 A. Are you asking me if I asked Ms. Stacey 14 did she say that? 15 Q. Yes. 16 A. I did, and she said she did not say 17 that. 18 Q. All right. Fair enough. Other than -- 19 strike that. 20 We know that Ms. Butler got 21 a reprimand because of that 22 confrontation. And we know that the 23 reprimand was given out to Mr. Jackson, I</p>
<p>38</p> <p>1 A. No, sir. No, sir. It's been a long time 2 ago. 3 Q. It has. And I'll ask you the same 4 question about Mr. Wynn. 5 A. Um-hum. 6 Q. Same answer? 7 A. Yes, sir. I have so many employees in 8 the District and so many -- it's just 9 hard for me to give an accurate answer. 10 Q. And Ms. Knight? 11 A. The same with Ms. Knight. 12 Q. And Mr. Taylor, the same answer? 13 A. Yes, sir. 14 Q. And did you talk to Ms. Stacey about the 15 confrontation? 16 A. The confrontation on the -- yes, I'm sure 17 I did. If I did the initial 18 investigation, that was probably brought 19 into it. 20 Q. Do you remember anything she said? 21 A. Other than what Todd brought up earlier 22 today and what I heard Karen say, it just 23 kind of brings back the same things I</p>	<p>40</p> <p>1 believe. 2 A. Was issued by Mr. Jackson, yes, sir. 3 Q. Okay. Would you have any idea or did you 4 discuss with Mr. Jackson why he didn't 5 give a reprimand to Ms. Stacey? 6 A. We did discuss the reprimand. And 7 Mr. Jackson felt that Ms. Butler deserved 8 the reprimand because she did not follow 9 his instructions from the previous Friday 10 not to discuss this with other employees 11 until he got back with them. If that had 12 been adhered to, then the confrontation 13 may not have ever happened, and that's 14 what disrupted the work. 15 Q. Okay. All right. I understand. So 16 it's -- and I may have heard this wrong 17 earlier. So it's your understanding that 18 Mr. Jackson had had a conversation with 19 Ms. Butler the previous week. 20 A. Yes, sir. 21 Q. About not discussing it with anybody? 22 A. Yes, sir. 23 Q. Okay. And that would have been after Ms.</p>

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<p>41</p> <p>1 Stacey came to Mr. Jackson and complained</p> <p>2 that Ms. Butler was attributing remarks</p> <p>3 to her?</p> <p>4 A. To other co-workers, yes.</p> <p>5 Q. Okay. And the reprimand was given out</p> <p>6 because Ms. Butler had talked to the</p> <p>7 other co-workers, not because of the</p> <p>8 confrontation with Ms. Stacey. That's</p> <p>9 what Ms. Butler had done wrong?</p> <p>10 A. The reprimand was issued to Ms. Butler</p> <p>11 because she did not follow Mr. Jackson's</p> <p>12 orders and, because of the failure, work</p> <p>13 was disrupted.</p> <p>14 Q. Even though Ms. Stacey was the one who</p> <p>15 initiated the conversation?</p> <p>16 A. I don't know that Ms. Stacey initiated</p> <p>17 it.</p> <p>18 Q. Okay. Do you know whether Ms. Stacey was</p> <p>19 given any instructions about discussing</p> <p>20 the matter?</p> <p>21 A. No, I do not recall.</p> <p>22 Q. Okay. Let me go through my notes for a</p> <p>23 second. I don't need privacy.</p>	<p>43</p> <p>1 come in and any comments that her</p> <p>2 supervisor may make and review her</p> <p>3 performance through her training records,</p> <p>4 certifications she should acquire to --</p> <p>5 in order to do her job. A lot of that is</p> <p>6 about all I can actually observe of her</p> <p>7 work, personally.</p> <p>8 Q. What are the requirements for promotion</p> <p>9 to a CE, at that time?</p> <p>10 A. The requirements for a CE? The State</p> <p>11 Personnel Board has that in place for</p> <p>12 someone to either get promoted or hired</p> <p>13 into the State, which essentially means</p> <p>14 meet minimum qualifications, submit an</p> <p>15 application. If that classification of a</p> <p>16 job requires examinations, go take an</p> <p>17 examination.</p> <p>18 Once you take an</p> <p>19 examination, you're placed on a register,</p> <p>20 and hopefully your name will be ranked</p> <p>21 high enough on that ranking on that</p> <p>22 register that when there is a vacancy and</p> <p>23 they call off of the register, you might</p>
<p>42</p> <p>1 MR. LYLES: Probably wanted to</p> <p>2 talk to yourself out loud?</p> <p>3 COURT REPORTER: Do you want</p> <p>4 to read and your sign your</p> <p>5 deposition?</p> <p>6 MR. LYLES: You can do that</p> <p>7 or waive it. She is good.</p> <p>8 Just waive it.</p> <p>9 A. Just waive it.</p> <p>10 Q. (By Mr. Lewis) Just two other things and</p> <p>11 I think we will be through.</p> <p>12 No. 1, are you personally</p> <p>13 aware of any complaints about Ms.</p> <p>14 Butler's work performance or her job</p> <p>15 knowledge or competence to perform</p> <p>16 functions of her position?</p> <p>17 A. I don't believe I could answer it in that</p> <p>18 form of the question. Repeat that.</p> <p>19 Q. Is she a pretty good worker in terms of</p> <p>20 knowing what she was doing and doing the</p> <p>21 job?</p> <p>22 A. I don't directly supervise her work. All</p> <p>23 I can do is look at the evaluations that</p>	<p>44</p> <p>1 get a notice to go take an interview for</p> <p>2 it.</p> <p>3 Q. All right. With CEs under Mr. Jackson,</p> <p>4 for example, who would be the</p> <p>5 decision-maker as to who to hire off the</p> <p>6 register?</p> <p>7 A. CEs under Mr. Jackson?</p> <p>8 Q. Yes.</p> <p>9 MR. LYLES: Vacancy in your</p> <p>10 District.</p> <p>11 Q. (By Mr. Lewis) Yes.</p> <p>12 A. Oh, in my District? I do the interview</p> <p>13 and selection. There's actually -- the</p> <p>14 way the department is structured, the</p> <p>15 interview team through the SPD that we</p> <p>16 have that sits down and interviews makes</p> <p>17 the selection off of the register that's</p> <p>18 forwarded to that team.</p> <p>19 Q. Are you aware of whether Ms. Butler was</p> <p>20 on that register?</p> <p>21 A. No, she was not.</p> <p>22 Q. She was not?</p> <p>23 A. She was not on -- none of the registers</p>

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1 I've ever interviewed for. I can't say  
 2 if she is on the register as a whole or  
 3 not.  
 4 Q. And then the last thing I want to go  
 5 into, and we've touched on this before.  
 6 This prior complaint she had against  
 7 Mr. Horace --  
 8 A. Um-hum.  
 9 Q. -- did you ever discuss with either Mr.  
 10 Jackson or anybody in Mr. Jackson's  
 11 office Ms. Butler's complaint about  
 12 Mr. Horace?  
 13 A. I never discussed it with Mr. Jackson. I  
 14 did discuss it with some of the  
 15 co-workers of Rene that were assigned to  
 16 Mr. Jackson, because they were directly  
 17 involved in the complaint of  
 18 Mr. Horace.  
 19 Q. Tell me about the conversations you had  
 20 with them.  
 21 A. It was during the complaint process with  
 22 Mr. Horace.  
 23 Q. It was not after she had been

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1 CERTIFICATE OF COURT REPORTER.  
 2 I, DAWN A. GOODMAN, do hereby certify;  
 3 That I am a Certified Shorthand Reporter  
 4 of the State of Alabama;  
 5 That the foregoing pages are a true and  
 6 correct transcript of the Deposition of Mark  
 7 Waits;  
 8 I further certify that I am not interested  
 9 in the outcome of said matter nor connected  
 10 with or related to any of the parties of said  
 11 matter or to their respective counsel.  
 12 Dated this 10th day of January, 2007, at  
 13 Prattville, Alabama.  
 14  
 15

16 \_\_\_\_\_  
 DAWN A. GOODMAN, CSR  
 State of Alabama  
 17  
 18  
 19  
 20  
 21  
 22  
 23

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1 transferred?  
 2 A. No.  
 3 MR. LEWIS: I have nothing else.  
 4 Thank you.  
 5 MR. LYLES: Okay.  
 6 (Whereupon, the deposition  
 7 adjourned at 2:00 o'clock  
 8 p.m.)  
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